

REMARKS

Claims 1-43 are pending and at issue in this application. No amendments are being made by this paper.

Applicants respectfully traverse the objection to the drawings. Applicants include herewith a replacement drawing sheet including Fig. 3 which has been amended to change "Intranet" to "Internet" in line with the examiner's suggestions. Entry of the replacement drawing sheet is respectfully requested.

Applicants respectfully traverse the rejection of claims 1-9, 15-19, 22-25, 27-35 and 41-43 as obvious under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2005/0007249 A1 (hereinafter "Eryurek '249") and U.S. Patent Application Publication No. 2003/0028268 A1 (hereinafter "Eryurek '268"), in view of U.S. Patent No. 6,889,096 (hereinafter "Spriggs"), and respectfully traverse the rejections of claims 10-14, 20-21, 26, 36-40 and 44 as obvious over Eryurek '249 and Eryurek '268 in view of Spriggs and further in view of one of U.S. Patent Application Publication No. 2003/0149608 (hereinafter "Kall") or U.S. Patent Application Publication No. 2004/0230897 (hereinafter "Latzel"). Applicants respectfully request reconsideration and withdrawal of these rejections for the reasons provided below.

Applicants submit that the examiner's use of both Eryurek '249 and Eryurek '268 in the above noted rejections under 35 U.S.C. §103(a) is legally invalid under 35 U.S.C. §103(c) and that these rejections should therefore be withdrawn. In particular, it will be shown that each of Eryurek '268 and Eryurek '249 is actually prior art to the claims of the current application only under 35 U.S.C. §102(e). It will additionally be shown that both Eryurek '268 and Eryurek '249 were commonly owned with the current application at the time these inventions were made and that, therefore, the applications corresponding to these publications are not available for use in an obviousness rejection under 35 U.S.C. §103(a) pursuant to 35 U.S.C. §103(c).

First of all, applicants note that the current application claims priority to two earlier filed applications, namely U.S. Patent Application Serial No. 10/394,683, filed on March 21, 2003 (the " '683 parent application") and U.S. Patent Application Serial No. 10/331,974, filed on December 30, 2002 (the " '974 parent application"). While the current application claims continuation-in-part status from each of the '683 parent application and the '974

parent application, applicants submit that the disclosure of one or both of the '683 parent application and the '974 parent application fully supports each of the independent claims, and some if not all of the dependent claims of the current application.¹ Here, applicants specifically refer the examiner at least to paragraphs [0040]-[0046], [0049], [0052]-[0053], [0057] and Figs. 1, 2 and 8-13 of the '683 parent application for clear support of the claims of the current application.² Because the '683 parent application supports the claims of the current application, the claims of the current application are entitled at least to the filing date associated with the '683 parent application, namely March 21, 2003.

Having established that the proper priority date for the current application is at least as early as the filing date of the '683 parent application (i.e., March 21, 2003), applicants note that Eryurek '268 and Eryurek '249 are only prior art under 35 U.S.C. §102(e), as both of these publications published less than one year prior to the March 21, 2003 priority date of the current application.³ Incidentally, applicants note the existence of a parent application to the Eryurek '268 publication, in the form of U.S. Patent Application Serial No. 09/953,811 which was filed on September 17, 2001 (the " '811 application") and which published as U.S. Patent Application Publication No. 2002/0077711 on June 20, 2002 (the " '711 publication"). While the examiner is requested to pay particular attention to this publication as well,⁴ applicants note that the '711 publication published less than one year prior to the March 21,

¹ In particular, applicants submit that one or both of the '683 parent application and the '974 parent application fully supports each of the independent claims and fully supports each of the dependent claims for in which the examiner is applying the combination of Eryurek '268 with Spriggs. In fact, the '683 parent application by definition supports all of the elements relied upon by the examiner in Eryurek '268 as the '683 parent application expressly incorporates by reference the application that published as Eryurek '268 and therefore includes all of the disclosure of Eryurek '268. (See '683 parent application, published as U.S. Patent Publication No. 2004/0139085, paragraph [0013].)

² The fact that applicants have only pointed to specific written-description support for the pending claims in the disclosure of the '683 parent application is not to suggest that the '974 parent application lacks such support. Instead, applicants have only pointed to the written-description support in the '683 parent application because, as long as the '683 parent application provides the necessary written-description support for the pending claims, it is irrelevant whether the '974 parent application does so as well.

³ Applicants note, in fact, that Eryurek '249 is prior art to the current application only under 35 U.S.C. §102(e) without regard to any parent application, as Eryurek '249 did not publish until *after* the filing date of the current application. Moreover, the PCT publication corresponding to U.S. National Stage application which issued as Eryurek '249 did not publish more than one year prior to the filing date of the current application.

⁴ Applicants note that the examiner has apparently considered this publication as it is listed on the citation of references provided by the examiner in the Office Action.

2003 priority date of the current application, and so the '811 application corresponding to the '711 publication is also prior art only under 35 U.S.C. §102(e).⁵

Furthermore, applicants specifically note that the applications corresponding to each of Eryurek '268 and Eryurek '249 publications as well as the '811 application corresponding to the '711 publication were, at the time of the inventions, owned by the same assignee (Fisher-Rosemount Systems, Inc.) which owns the current application. (Fisher-Rosemount Systems, Inc. also owns the '683 and '974 parent applications). In particular, the assignments by the inventors to Fisher-Rosemount Systems, Inc. in each of the applications which published as Eryurek '268 and '249 (as well as for the '711 application) are recorded at Reel 013224, Frame 0554 (application corresponding to Eryurek '268); Reel 014848, Frame 0189 (application corresponding to Eryurek '249); and Reel 012564, Frame 0941 ('711 application). Likewise, the assignments from the inventors to Fisher-Rosemount Systems, Inc. with respect to the current application, as well with respect to the '683 and the '974 parent applications are recorded at Reel 015566, Frame 0164 (current application); Reel 014139, Frame 0876 ('683 parent application); and Reel 014520, Frame 0382 ('974 parent application).

Because both Eryurek '268 and Eryurek '249 are only prior art under 35 U.S.C. §102(e) and were commonly owned or subject to an obligation of assignment to the same assignee as the current application at the time of the invention thereof, Eryurek '268 and Eryurek '249 are improper references under 35 U.S.C. §103(a) pursuant to 35 U.S.C. §103(c). As a result, applicants respectfully request the examiner to withdraw the rejections of each of the pending claims based on these publications.⁶

⁵ For the sake of completeness, the applicants direct the examiner's attention to the fact that the '811 application claims priority to two other applications, now issued as U.S. Patent Nos. 6,774,786 and 6,298,454.

⁶ To the extent that any of the dependent claims of the current application are not fully supported by the disclosure of the '683 parent application, applicants submit that the examiner has still failed to provide a *prima facie* case of obviousness with respect to these claims as the examiner has failed to point to any motivation within any of the cited references for making the combinations referred to by the examiner.

Conclusion

For the reasons provided above, applicants submit that all the pending claims are in condition for allowance and respectfully request a notice of allowance in this case.

Applicants submit that this response is timely filed as it is filed with a request for a three month extension of time as well as with an authorization to charge the requisite fee therefore to the deposit account from which the undersigned attorney is authorized to draw. However, should any further petitions be required, please consider this paper as such a petition and please charge any additional fees which are required for consideration of this response to Deposit Account. No. 13-2855. A copy of this paper is enclosed herewith.

Dated: October 25, 2006

Respectfully submitted,



Roger A. Heppermann

Registration No.: 37,641

MARSHALL, GERSTEIN & BORUN LLP

233 South Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicants